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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,121	10/22/2003	Bodin Dresevic	14984.12.1.1	5333
47973	7590	09/07/2005	EXAMINER	
WORKMAN NYDEGGER/MICROSOFT			BRIER, JEFFERY A	
1000 EAGLE GATE TOWER			ART UNIT	
60 EAST SOUTH TEMPLE			PAPER NUMBER	
SALT LAKE CITY, UT 84111			2672	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/691,121

Applicant(s)

DRESEVIC ET AL.

Examiner

Jeffery A. Brier

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-7 is/are allowed.
- 6) ☒ Claim(s) 8-12 and 18-21 is/are rejected.
- 7) ☒ Claim(s) 13-17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Detailed Action

Response to Amendment

1. The response filed on 5/26/2005 has been entered and no amendments to the specification or claims were filed.

Response to Remarks

2. Applicant remarks filed on 5/26/2005 have been fully considered.
However, applicant failed to respond to the second double patenting rejection based upon US Patent No. 6,624,828.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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4. Claims 12, 18 and 19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, and 10 of U.S. Patent No. 6,624,428. The parent of this application and of patent 6,624,428 is the same provisional application 60/118,087. Thus, the meaning of claim terms derived from the specification will have the same meaning since they are from the same ultimate parent application. Although the conflicting claims are not identical, they are not patentably distinct from each other. Claim 12 of this application is broader than patented claim 1. The claims in the pending application may be used against the infringer of the patent's claim 1 because to perform infringement of a comprising claim the accused infringer needs to at least perform the recited claim limitations and may perform additional unclaimed limitations. Thus, the grant of this claim without a terminal disclaimer will allow possible harassment by multiple assignees. Also the claims of this application are broader than the patented claim and in following the teaching in *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970) this broader claim is obvious type double patenting which may be overcome by a terminal disclaimer. A comparison of claim 12 follows.

Claim 12 of this application 10/691,121	Claim 1 of US Patent 6,624,828
12. In a computer system including a processing unit and a display device,	1. In a computing system having a display device that has a plurality of pixels, each pixel having a plurality of pixel sub-components of different colors that may each be treated as independent luminous intensity sources,

<p>wherein the perceived quality of an image displayed on the display device may be affected by a variety of factors including a user's ability to perceive the displayed image, and</p> <p>wherein the user's ability to perceive tends to vary from one user to another, a method of increasing the perceived quality of a displayed image by compensating for the user's ability to perceive, the method comprising the steps for:</p> <p>storing user profile information about at least one user's ability to perceive a displayed image on said display device, the user profile information including information about a user's ability to perceive color versus resolution when performing scan conversion for each sub-component of a pixel;</p> <p>when processing a representation of an image to be displayed on said display device, performing a filtering operation on the data representing the image to be displayed using said stored information about a user's ability to perceive color versus resolution; and</p> <p>displaying the processed image on said display device.</p>	<p>a method for displaying an image on the display device in a manner that balances a particular user's perception of color and resolution, the method comprising the following:</p> <p>an act of measuring a specific user's preferred balance between color correction and resolution when viewing images on a display device in which pixel sub-components may be treated as independent luminous intensity sources;</p> <p>an act of accessing an image that is digitally represented by multiple values each representing a unique sample point that corresponds to a pixel sub-component of the display device;</p> <p>an act of performing color compensation on the digital representation of the image such that the extent of color compensation depends on the specific user's measured preferred balance; and</p> <p>an act of displaying the color compensated image on the display device.</p>
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Claim 18:

Claim 18 of this application corresponds to patented claim 9. For the rational given above for claim 12 this claim would have been obvious to one of ordinary skill in the art.

Claim 19:

This claim corresponds to patented claim 10.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 8-11 and 18-21 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. This application is directed to a useful, concrete, and tangible result, however, these claims are directed to a computer program product, a program per se. These claims do not have a computer actually executing the computer-executable instructions within the computer readable medium. The claimed computer readable medium has not been claimed to be employed as a computer component. The claimed phrase "that, when executed by one or more processors of the computer system including the processing unit, cause the computer system to perform a method"

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is an intended use phrase and not an actual use phrase. Therefore the computer readable medium comprises nonfunctional material which is copyrightable intellectual property rather than 35 USC 101 type of intellectual property. These claims need to manifest in alignment with the specification "the computer program product comprising one or more computer-readable media having thereon computer-executable instructions executed by one or more processors of the computer system including the processing unit causing the computer system to perform a method". Refer to MPEP 2106 IV B 1 (a to b) and 2106 IV B 2 (a to b).

Allowable Subject Matter

7. Claims 2-7 allowed. Claims 8-11 would be allowable if amended to overcome 101 non statutory rejection. Claims 18-21 would be allowable if amended to overcome 101 non statutory rejection and if a proper terminal disclaimer is filed. Claim 12 would be allowable if a proper terminal disclaimer is filed and its dependent claims, 13-17, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter:

Claims 2-11:

The prior art of record fails to teach or suggest:

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storing user profile information about a user gamma value preference and performing a gamma value correction operation on the data representing the image to be displayed using the stored user gamma value preference information.

Claims 12-21:

The prior art of record fails to teach or suggest:

storing user profile information about a user's ability to perceive color versus resolution when performing scan conversion for each sub-component of a pixel and performing a filtering operation on the data representing the image to be displayed using said stored information about a user's ability to perceive color versus resolution.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffery A Brier whose telephone number is (571) 272-7656. The examiner can normally be reached on M-F from 7:00 to 3:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi, can be reached at (571) 272-7664. The fax phone Number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Jeffery A. Brier". The signature is fluid and cursive, with the first name "Jeffery" being more prominent and the last name "Brier" following in a similar style.

Jeffery A Brier
Primary Examiner
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